

Town Council Minutes August 5, 2002

This meeting of the Malabar Town Council was held at the Town Hall at 2725 Malabar Road.

ROLL CALL: MAYOR/CHAIR	PHILLIP CREWS
VICE CHAIR	CHARLENE HORTON - ABSENT
COUNCIL MEMBERS:	BOBBI MOCCIA
	BOB ROSSMAN
	NANCY TINIO-BORTON
	STEVE RIVET
ATTORNEY:	KARL BOHNE
CLERK:	SUSAN KABANA
DEP CLERK:	DEBBY FRANKLIN

Also present were the Building Official Jim Phelps and Fire Chief Chuck McClelland.

CALL TO ORDER, PRAYER AND PLEDGE

This meeting was called to order at 7:30pm by the Mayor. Prayer and pledge led by the Mayor.

ADDITIONS AND DELETIONS TO AGENDA

Moved Public portion of meeting to before the Action Items.

Without objection, this was approved.

PRESENTATIONS:

1. LARRY WEBER, KEEP BREVARD BEAUTIFUL, TRASH BASH CHECK PRESENTATION

Weber called Carl Beatty, Site Captain for Trash Bash and Alan Wollard, Chairman of the Park Board up to podium and thanked them for their efforts. Weber also thanked Beatty for all his efforts over the years in acting as site captain for this event. Malabar had 83 volunteers and 976 bags of trash. Most trash collected in all of Brevard County. Weber stated that Malabar was awarded checks in both categories, most volunteers for their category and the most trash collected. He presented checks for \$250. to Malabar Boy Scout Pack and \$250. to Malabar Boy Scout Troop for their volunteer efforts during Trash Bash. John Henkleman accepted for both the Troop and the Pack. He then presented to Park Board Chairman Alan Wollard a check for \$500. for their contributions. Weber again thanked Beatty for his efforts as site captain over the years and thanked Council and Mayor for giving him support over the years.

2. JOHNNIE WHIMPEE ON VENTURING PROGRAM

Whimpee introduced himself and said he was there representing the new Venture Crew that the scouts were starting. He had handed out informational packets and asked if there were any questions. He was asking for sponsorship from the Town Council. The program is for 8th grade and up or 14 years old and up and is for both boys and girls. Her explained that it was different from the Explorer program in that they do outdoor activities. Explorers are more career oriented. The kids themselves will determine the exact interest. Mayor asked if Council had any questions. Rossman was an explorer

and he did outdoor activities. Rivet asked what kind of sponsorship. Whatever they can do. He was committee chair that formed the original pack and troop along with Henkleman and Beard. BSA responsibilities – help find a meeting place either here or at fire station. Issue of the charter representative. He has a volunteer, Mr. Souders, Marie Street.

Without objection the Town will accept the sponsorship.

3. TOM ESCHENBERG ON EAGLE CORPS

Eschenberg updated Council with “Plan B.” He got in touch with the deputy in charge of the sheriff’s COP program. BCSO will not help us if we want to be independent. Council wants it for only Malabar. Town resident who is a cop in Titusville has offered to do the training class. He asked if BCSO to do back ground check and they do not want to do it. He said we could do it ourselves. We do need some type of communication. Cell phone for the exclusive use of the volunteers. He says he will have eight to ten volunteers. He would like to have the first training session by the end of the month. Mayor asked they could use fire department radio. Tinio-Borton asked when it was started why we did not want to go in with county. They explained this was also meant to be only for Malabar.

Without objection they approve a cell phone.

Park Chairman Alan Wollard suggested something similar to what post office uses – sponsorship from a local business. It limits the numbers users could call and the local business picks up the cost of the cell phone. Clerk is directed to check into this.

4. SECURING JORDAN SCRUB AREA, TRASH AND BOUNDARY ISSUES, ZACH PRUSAK

Prusak thanked Mayor for allowing him to address Council. Refers to packet and passes out picture of the Jordan site. EELs and two other owners are the owners of the bulk of this area. Site B is town owned dump site. Site D is access point. Site E is what they use to go shooting. Site F and G access from Valkaria, Site H party use. Site F is where they have found two stolen vehicles. It is another dump site. Sites J and K are major dumping sites. Site M is has another gate that is down. They are trying to mark the boundaries and put up fence posts and signs so the deputies can enforce. Long-range goals are to secure this area so it is safe for horse back riding. If there is an awareness of what is going on then we can work together. They use volunteers and BCSO responds well. The gates will go at E, G, and C sites. There is Jet Ski use on the lake and they will fence off access roads. There have already been gates damaged and signs replaced. Challenge also is establish boundaries. It is 400-acres that they manage. Site M gate really needs to be checked and kept locked. Having presence out there will help diminish the litter and dumping. Tinio-Borton asked if this is the piece that was sold to the state. Do they get any money from the State. Anne Birch, EELs director, from audience, stated that they have to pay state an annual lease fee. Their money can only be used to purchase land. The actual dumping takes place quite often. Resident LaVanture has complained several times. Most of the dumping is on the Cochran property. Mayor has talked to Beatty on strengthening the gates. Beatty wrapped a chain around the post but he doesn’t know if it is still there. Need a constant presence. Combination of gating and posting and patrolling will help. It is off the beaten path. Mayor asked what the timetable to get all the gates in place and the fencing. Prusak stated by the end of the year. EELs staff does patrol. Cochran property is still in mitigation. Mayor asked if he could buy another piece and trade this piece off. Prusak said no.

Rossman asked if they would be using existing trails. Yes. Perhaps five or six miles of trails. Rossman said it looked like we are in part the culprit because of the Town owned lot. We need to post a sign and state that it is a Malabar site. Mayor asked for a workshop to discuss ROWs within the proposed properties to be purchased. Tinio-Borton asked if it could happen after the Town Administrator position is filled. Birch had met with Phelps regarding the Flagler properties and she is still pursuing acquisitions. They are being appraised. If the town desires a ROW in that area, then they would have to buy the ROW prior to EELs buying their portion, because they can't sell conservation land. Timeframe for when she needs a workshop. ASAP. Rivet said we can't wait. She would like it before the end of the month. Tinio-Borton wants to set the WS date at the next meeting. Tinio-Borton wants Phelps to have a package ready for Council to review prior to the WS. Rossman wants Washburn to be at the meeting. The WS will have EELs staff.

MOTION: Tinio-Borton / Rivet to approve consent agenda. Vote: All Aye.

CONSENT AGENDA:

- (A) COUNCIL W/S MINUTES 7/18/02 (B) COUNCIL W/S MINUTES 7/23/02
(C) BUILDING OFFICIAL'S REPORT

REPORTS:

ATTORNEY – nothing at this time.

CLERK: Kabana had two items. She would like to set the budget workshops. August 13 at 7:30 (Tuesday). The other thing is the invoice from the lobbyist for \$? She said one of the things was the one million for roads. Mayor thought that he also worked for the FRDAP grant. She wants to know where to take it from. She said there was money in the Administrator's line item. Council consensus was to pay it from there. She reported that the percent of revenues lead expenses.

PUBLIC HEARING:

1. ORDINANCE 02-03, REPEALING THAT PORTION OF SECTION 1-3.3 OF THE LAND DEVELOPMENT CODE OF THE TOWN CONCERNING THE AUTHORITY OF THE PLANNING AND ZONING BOARD TO ISSUE WAIVERS TO SETBACKS

MOTION: Tinio-Borton / Rossman to read by title only. Vote: All Aye. Mayor read by title only.

MOTION: Tinio-Borton/ Rossman to approve Ordinance 02-03. Rollcall vote: Rossman, Rivet, Moccia, Tinio-Borton – Aye; Horton, absent.

PUBLIC:

Frank Bosco has discussed his drainage problems with the county and has gotten little to no help. Problem only started after roads went in. Lack of planning when Corey Road was paved. He has tried to find out when it was paved and can't find out anything. He has found trash from up the road and walking fish in his yard due to the lack of drainage. Realtors tell him it is more than a minor problem. Affects septic systems and that is floating back into the ocean and waterways; The accumulation is affecting everything. He has had 2 feet of water in his yard. Even after it drains it leaves an excessive amount of moisture and he has had his house tested for molds. The moisture creates a green house effect. On a hot day, it then penetrates the house and the air conditioner running then causes condensation. It starts with the ditches bringing in the water into the yards. He has called in the county many times. He has taken photos and his house is reflected in the water in his yard. County people have come out and it was

a joke. Mayor explained he had a two-hour meeting with St. Johns today to improve the storm water utility especially for the Corey Road area. They are trying to save this grant. Bosco gave recommendations to county people. He has suggestions that would improve the situation. He has had a lot of damage. He has talked to neighbors regarding filing a class action lawsuit. Mayor said we have restrictions that prevent an adverse impact while designing a stomacher program. Need a big pond. There is empty land near him. Corey Road was paved between 80 and 86.

Donald Helenburg: Standing water at 2430 Homestead Lane. For the two houses south of him the water is supposed to go south and the properties to the north are supposed to go north. His property is in between and the water goes nowhere. He would like to get something done. That's all. Moccia had been out there. He is where there is nothing. His driveway is under water most of the time. She has taken Beatty out there. The grant is very important.

Kloeppel 970 Malabar Road, Harris Sanitation, ten years ago Council passed an ordinance that forbid burning of trash and required mandatory service. Four years ago they passed ordinance that required further mandatory service subscription. Early Council tried to get in on the tax bill so citizens would have to pay whether they got service or not. They have not picked up three times in the last six weeks. Let him burn his trash like he has for the last 40 years. Mayor will call David Shoenberger tomorrow. Rivet said he had the same problem at times. Phelps said to call town hall and report it. Karl stated it is in the ordinance that there is a procedure. (Note: There is a provision in the contract with WM that they need to respond to complaints in a timely manner, otherwise Council has the option of canceling the contract. Complaints must be documented through Town Hall.)

Withers, Candy Lane, talks about trash problems. Harris is not fulfilling its job. Items of concern. He reads from handout (attached.) He refers to what public works (PW) did on Corey Road (putting in a temporary bridge with material they had on hand at PW complex when residents culvert blew out in heavy rain.) He wanted to know why there is no five-year plan. He then refers to a packet of 30 pages that asked why a tuxedo was rented by Council and paid for by taxpayers. Kabana said yes it happened. He then asked about the membership for Hall and the Mayor to join Civ-Mil Association at an annual membership of \$250. each for a total \$500. Tinio-Borton said we are beating a dead horse. Rivet is not looking to crucify anyone, but we need to address this misuse and not let it occur again. Rossman said we don't have good policies and procedures in place. Withers is saying there were past mistakes and let us fix them. Mayor said if the issue is policies and procedures then we need to move forward. Develop them so this won't happen again. Mayor said it is unfair to levy charges when they don't have specifics.

ACTION ITEMS:

1. AUTOMATIC EXTERNAL DEFIBRILLATOR PURCHASE REQUEST FROM FIRE DEPARTMENT

Chief McClelland stated that they have tried to get this before with grant money and through the County. They have found a refurbished unit for 12, 500 and they have it in the budget. Capital equipment budget has money in it.

Without objection, this is approved and will not have to be bid out because of the SNAPS proposal.

Atty Bohne stated that the quote may include handling and shipping charges.

2. RESULTS FROM REQUEST FOR AUDIT PROPOSALS

Mayor showed the three proposals and asked for Council input. Tinio-Borton liked Bergen and they do a lot with Brevard County. Rivet asked Kabana for her opinion. If she didn't know Council's mind she would like to keep current auditors. It was her impression that council was ready for a change. The other two are qualified. She was impressed with Bergan Hopkins because they had the where with all to go out on the Internet and look at our website and get our Town seal. She was impressed with that. Our last audit cost 18K. There are new requirements (GASP 34) that will require non-governmental accounting in addition to governmental accounting. Two sets of financial papers. Bankers couldn't read governmental accounting. That will take quite a bit of money. She can have ask Bergan Hopkins to come to the next meeting for an oral presentation. Rossman said isn't Bray Beck and Koetter already getting started on GASP 34. No. She will contact Bergan Hopkins.

3. RECOMMENDATION FROM PARK BOARD FOR SIGN FOR MALABAR COMMUNITY PARK ON TOWN OWNED PROPERTY ALONG MALABAR ROAD

Council consensus to defer until we get prices/quotes.

4. PARK BOARD REQUEST TO AUTHORIZE FRAZIER ENGINEERING TO PUT TOGETHER BID FOR IRRIGATION OF PARK FIELDS USING FRDAP FUNDS

Motion: Rossman/Rivet to approve. Vote All Aye.

5. DISCUSS PRE-SELECTION COMMITTEE FOR TOWN ADMINISTRATOR

At a civ-mil meeting, someone told Mayor about a free service that past city managers will review resumes of candidates and rank them for Council. The FLC also offers this service. Rossman and Tinio-Borton both want to be on committee. Top five should be checked out. Tinio-Borton went through some of them the other day. Rivet said it might be a good thing to have FLC review them and/or prior retired city managers who provide this free of charge. Mayor will contact Mayor Shultz. If FLC is going to be a prolonged process then let Council do it. Then have the whole council review them.

6. TRANSPORTATION IMPACT FEES FOR BERRI PATCH

Mayor makes disclosures that he has contact with Foley's. Tinio-Borton has discussed this with Commissioner Higgs regarding this in an effort to resolve. Mrs. Foley presents. Several things have happened. County did disallow the road that they put in (Malabar Road improvements.) They have now spent in excess of 107K on the road improvements. The County Impact Fees have increased since as well. It is now 37K. Plus 2K in solid waste. They want a letter stating they requested impact fee information and that they have vested rights with both the town and the county because they were not told of this initially and since then the fees have actually gone up. She refers to handout and speaks to the timeline. On 4/25/01 Foley got fax from Pauline at county Impact fee office stating the solid waste fee would be \$2K. On 4/29/01, Mr. Foley spoke to Vivian in the Malabar Building Department regarding impact fees. The next day he spoke with Phelps who advised him about the new building codes that would be going into effect. He signed application on May 25 and then was told by Phelps that the owner needed to sign so they mailed it to owner since they had not closed on property. She then referred to the legal ad the county placed regarding a public hearing on impact fees on April 24, 2001. The following day is when Pauline in the County Impact Fee office said there were no impact fees. He spoke to Phelps and cannot believe that Phelps would tell about the new building codes and not the impact

fees. Had they known they would have over-nighted the application to the owner and gotten it back and submitted it before the deadline. FDOT also originally told them that they wouldn't have to do Malabar Road improvements. They said County staff dropped the ball as well as FDOT. She has a state of the art facility. The facility is a school – not a day care center. She is looking for relief. Will go before County Commission and would like a letter stating they have a vested right and Malabar Council supports the waiver of Transportation Impact fees. County still hasn't provided accurate information and referred again to the handout. Because of the way the county has her facility classified she is paying more than any other school. Tinio-Borton stated she got a call from an upset caller stating that they were afraid this facility would not be able to open. Rest of Council also received similar calls. Mayor said the evidence is over whelming that they would have submitted prior to the deadline if they had known. Rossman wanted to hear from Phelps. Phelps stated he told Foley to take his engineer when he goes before county. What about the timeframe. His discussions began at least a month before the actual filing of the application. Not documented times or dates. Impact fee technician wasn't notified. Phelps said he tells people we don't have an impact fee and he refers them to the county. Rivet asked Atty Bohne if the developer is ultimately responsible to make an in depth inquiry and Bohne responded that the developer is on constructive notice from the time the project is begun. He acknowledged it is not a popular opinion. Rivet asked about civil action possibilities. Would Malabar be liable? Atty Bohne assumed Vivian told Foleys there is no Malabar impact fee and that is not a problem. If Vivian said there was no county impact fee Malabar would still not be legally liable – sovereign immunity. Rivet said if they make a recommendation County Commission they will follow it. Tinio-Borton said we should bite the bullet. When applicants come into a government office they should expect to receive correct information. She does not want to set a precedent of giving impact fee money away; she wants to set a precedent of the town doing the right thing in this case. The applicant should have been told the correct information from the county. Rossman said they are not doing this for free – they are a business and will be making money. Rivet stated that assuming the story is how it was presented this night, we are being asked to pay for the county giving the wrong information. It is not our responsibility to answer that and there are no Malabar impact fees. Tinio-County said after speaking to Commissioner Higgs, there is no guarantee that the County will follow our recommendation. Rivet predicted that if we ask the County to give away our money; they will. Mayor said we expect fair and ethical behavior from our government and he doesn't think this was fair. Moccia said the people the applicant looked to for the correct information didn't give it to her.

MOTION: Tinio-Borton/Rossman to support the request for the waiver. Citizen asked how much they are going to have waived. Mayor said the solid waste was disclosed and the other was not. **VOTE: Tinio-Borton, Moccia - Aye; Rivet, Rossman, Nay; Mayor – Aye.**

7. APPLICATION TO PLANNING & ZONING, ROBERT BURGESS, 2560 RUSSELL LANE

Mayor recommends Burgess, Some discussion. Citizen from audience is also interested. Kabana said there are two openings.

MOTION: Rivet/Rossman to approve Robert Burgess for alternate on Planning and Zoning Board. Vote all AYE.

8. SELECT ALTERNATE SIGNATORY FOR TOWN CHECKS

Mayor explained we need replacement.

MOTION: Rivet/Rossman to appoint Rivet for signatory purposes.**9. DISCUSSION OF DISTRICT 2 VACANCY**

Mayor stated that we need replacement. He suggested leaving the seat open and let the voters decide in November. Discussion that she vacated her seat. Atty Bohne asked what the basis was; has she missed three meetings or has she moved from area. Council needs to give her due notice. The burden of proof is on her. Put on next council meeting to appoint someone to fill position until November elections. Kabana will send a letter to last known address. Then on the next meeting address that and then appoint. Charter doesn't say anything about posting requirement. Mayor said we can leave it open. Rivet and Rossman want the seat filled and show what happened tonight as perfect example.

10. REQUEST BY BUILDING OFFICIAL TO SCHEDULE WORKSHOP REGARDING BUILDING DEPARTMENT

Phelps wants this before the budget is set. Things may affect the budget. Tuesday, August 20 is selected to hold first the workshop on the building department and then to hold the second budget workshop directly afterward

DISCUSSION:**1. REQUEST FOR DISCUSSION OF POSSIBLE REZONING OF LAND ON THE SOUTH SIDE OF MALABAR ROAD NEAR THE HOSPITAL AS REQUESTED BY SUNSHINE DODGE-ISUZU.**

Phelps speaks to this. There has been interest shown by company. It would require a change of zoning, changes of comp plan and a conditional use because the current code states that such a facility has to be on Babcock Street or US 1. It was discussed at P&Z and they weren't interested and the applicant asked Jim to get Council's opinion on this. Tinio-Borton asked if they were on the border with Palm Bay. Would they ask Palm Bay to annex? It does not border Berri Patch. Consensus was not to desire a car lot at that location.

REPORTS: MAYOR, COUNCIL

Mayor started off with his meeting with St. Johns. The conditions of the two grants (St Johns and FEMA) differed because of the water quality issue. The 1.4M from St Johns to buy the retention pond location is not going to happen. When he met with the permitting folks at St Johns, he discovered they were not fond of this part of project. The retention pond would only offer a 1% impact of water quality improvement. There was no firm evidence that water quality would be significantly improved. St Johns would be amendable to a modification of the permit to take the pond out and do some other things that would improve water quality. St Johns would like to see the Town take on some project that would improve water quality. The Town dumps a lot of raw water into the Indian River. If we put boxes along the river, where the water flows into the river. We would have to pay the county to empty the boxes. They also want to look at town's property (100 acres known as Cameron Preserve) but have to check and see if it can even be used in that way. He will communicate this to Jakita Jones at DCA. He is talking about 100 year culverts. He will instruct the engineer to proceed after talking to Jakita and verifying that the FEMA will still have the money. Tell her we will modify grant that we have the permit to start but that we are going to modify it by taking the pond out. Engineer has to review data, and modify permit. St. Johns wants to know our schedule for paving roads. They would like us to accelerate that process. He has asked Rep. Needleman to ask for money for roads for water quality issues as well. They will do

flood control. Scale out the project of the last bid. He asked for Council approval. Rivet stated he is making progress. Mayor was happy with the cooperative spirit of the meeting.

Rossman: nothing.

Rivet: He had visited their sister city. Had dinner with the Mayor and was in the paper and offered to show it to all.

Moccia: attended Palm Bay's Council meeting and watched a presentation on the new credit card policies. The people that approve the invoices and credit sales would be in a position to responsibility. She said that the people that authorize the approval of payment of credit card charges are as accountable as the card user. Mr. Driver from audience stated that FS 119 requires receipts. She is continuing her investigation and Council knows what it is about and wanted Council authority to continue and use town paper and copier in her investigation. She would like to make a motion to continue until she has a figure for reimbursement to the Town. It is her time and she is willing to spend it. But there may be a cost involved if she orders receipts. Moccia stated that the phrase "at this time" was added to the motion so that if she found anything blatant that this Town should indeed ask for reimbursement. Mayor asked if there was going to be some point in time where this individual is given an opportunity to respond to charges. She agreed that he would be given due process, but her opinion is he should be made to reimburse town. She has already incurred costs for numerous phone calls and does not want to be reimbursed. Driver, from audience asked who enforces FS 119. Atty Bohne responded stating that elected officials are required to keep documents that have to do with Town business. Violations would be forwarded to the State Attorney's office who would contact the local policing jurisdiction and in Malabar case would be BCSO. She thinks he should be held accountable. Rossman and Rivet have no problem with her continuing her efforts and to let them know when she comes up with a figure. She stated that the DA's office refers you to BCSO and you must file a complaint and it is the decision of BCSO whether they would investigate. Mayor explained his trip to Disney and the letter he then got to file with his form 1. Rossman recommends she go ahead. Rivet trusts her judgement.

MOTION: Rossman/Rivet to allow Moccia to continue her investigation until she comes up with a figure. VOTE: All Aye.

Tinio-Borton: She has August 9 workshop with Beatty at 10am with the County PW regarding Benjamin Road. She asked if anyone minded. No. Re: the Palm Bay beltway she spoke with Palm Bay Council person Pat Woodard and acting City Manager Sue Hann. She would like Council opinion on this proposal. Hann had volunteered to come and talk to Council and ask for our support. Rossman explained that he had attended the TAC meeting that morning and all three options were discussed. All three each have three sub-options. Mayor of Melbourne had some concerns regarding the priorities the TAC is considering. At the end of the meeting all nine options stayed on the table. It will go before MPO next Wednesday. Palm Bay will then ask for a letter of support. Tinio-Borton asked if it would be beneficial to have her come to next council meeting. Withers from audience explained his opinion of the beltway and its connection to the causeway. Mayor said there is obviously a need for another north south corridor west of I95. The six lanes are approved to FT. Pierce.

Rivet: He asked Atty Bohne about the truck-parking ordinance. Bohne has talked with Phelps, they have reviewed Palm Bay code, and the process has started. Bohne will have an ordinance for next meeting.

Meeting adjourned at 11PM.

BY:

Mayor Phillip R. Crews, Chair

ATTEST:

Debby Franklin, CMC
Deputy Clerk
